

IN SENATE OF THE UNITED STATES.

JANUARY 18, 1848.

Submitted, and ordered to be printed.

Mr. JOHNSON, of Louisiana, made the following

REPORT:

[To accompany bill S. No. 92.]

*The Committee on Pensions, to whom was referred the petition of Thompson Hutchinson, only son of Thomas Hutchinson, deceased, report:*

That this case was examined by the Committee on Pensions, of the Senate, during the first session of the last Congress, by whom a favorable report was made thereon, (March 30th, 1846,) which is herewith submitted; that they have examined the said report with care, and concurring therein, now adopt it as part of their report; and the committee report a bill for the relief of the petitioner.

IN SENATE OF THE UNITED STATES--March 30, 1846.

Mr. JOHNSON, of Louisiana, made the following report:

*The Committee of the Senate on Pensions, to whom the petition of Thompson Hutchinson, only son of Thomas Hutchinson, was referred, have given it a careful examination, and report:*

That the petitioner claims to be allowed the amount of the pension which would have been due and payable to his said father, from the 7th of July, 1818, to the time of his death in the month of February, 1835, if he had not, as is alleged by the petitioner, been erroneously dropped from the rolls. It appears from the evidence on file, that Thomas Hutchinson was placed on the pension roll on the 24th of July, 1818, his pension to commence on the 6th of that month, in consideration of his service as a private in the regiment commanded by Colonel George Gibson; and that he was very soon thereafter dropped from the rolls, in pursuance of the decision of the then Secretary of War, that Gibson's was not a continental regiment, and therefore not embraced in the act of 18th

March, 1818. That this decision of the Secretary of War was erroneous, is distinctly established by subsequent events. The administration of the act of the 15th of May, 1828, involved a full examination into the claim of Gibson's regiment to the benefit of that act; which, in the *exact* language of the act of 18th of March, 1818, allowed a pension to such officers as had served a specified time on the *continental establishment*. The result was a decision to allow the benefit of that act to Gibson's regiment; which, though not a continental corps by its original organization, was by an act of the Virginia Assembly of October, 1777, *transferred to serve on the continental establishment*, in lieu of, and as a substitute for, the 9th Virginia *continental regiment*, which had then recently been annihilated at the battle of Germantown; and in *that service* it continued more than two years, under the immediate command of the commander-in-chief of the *continental army*. Such being the ascertained character of the *actual service* of Gibson's regiment on the *continental establishment*, the Secretary of War has, ever since the year 1830, decided that those who served in Gibson's regiment were entitled to a pension under the act of 18th March, 1818. As evidence of this, it appears in the examination of this case, that three old men, Patrick McEwen, Elijah Green, and Thos. Hutchinson, were dropped from the pension roll in 1819, on the ground that Gibson's regiment in which they had served was not a continental corps; and that in 1831, Elijah Green and Patrick McEwen were restored; it being decided that their *service* on the *continental establishment* had been such as to entitle them to the pension of which they had been erroneously deprived by being dropped from the rolls in 1819. About the same time, John Carr, who by the same error had been *refused* a pension in 1818, was also restored to the rolls. Congress has by many acts confirmed the foregoing decisions in relation to those who served in Gibson's regiment; two instances of which occurred in the cases of Patrick McEwen and Elijah Green. They, as has been stated, were dropped from the rolls in 1819, and restored in 1831; but their pension was erroneously made to commence on the 7th of June, 1831; thus withholding from them the amount of pension which they would have received from 1818 up to June, 1831, if they had not been dropped from the rolls. To remedy this, they petitioned Congress, and an act passed allowing to Patrick McEwen, and to the children of Elijah Green, the amount of pension claimed by them from the year 1819 to the 7th of June, 1831. (For the case of McEwen, see reports of Committees of House, 1st session 24th Congress, No. 391; and for Elijah Green, report No. 684, same session.)

The committee feel warranted, by this settled construction of the act of the 18th of March, 1818, to assume that Thomas Hutchinson was erroneously dropped from the pension roll in 1819; and as it has been the uniform practice, under the pension system, to allow to a claimant to pension whatever amount of pension may have been erroneously withheld from him, there seems to be no question as to the justice of allowing now to the children of Thomas Hutchinson the amount of pension which he must necessarily have received

from the time he was dropped from the rolls till his death ; nor does the fact that he did not again apply to be restored to the rolls, in the opinion of the committee, impair the claim to his pension withheld from him *in error*. He was living when the error was ascertained by which he had been deprived of the pension now claimed. And the moment that error was ascertained, his right to the pension accrued in virtue of his enrolment in the year 1818 ; and as he did not receive it, his children have a legal and just claim to it. Thomas Hutchinson is represented to have been an ignorant, aged, and very poor man, and who died very soon after it was decided officially that he had been dropped from the pension roll in *error*. This may naturally be assumed as the reason why he did not apply to be restored. The Commissioner of Pensions states, that on application he would have been restored to the rolls ; that his failure to apply was owing probably to his death. The 3d section of the act of 18th of March, 1818, *expressly directs* that *all pensions under that act shall commence at the date of the declaration of a claimant to pension*. What the claimants ask is, in this case to derive the benefit they would have derived in virtue of that act, but for the *error of the officer charged with its administration*. This the committee consider both legal and just, and to that end herewith report a bill.

